

110TH CONGRESS
2D SESSION

S. RES. 631

Expressing the sense of the Senate that the Senate has lost confidence in the Administrator of the Environmental Protection Agency, Stephen L. Johnson, that the Administrator should resign his position immediately, and that the Department of Justice should open an investigation into the veracity of his congressional testimony regarding the California waiver decision and pursue any prosecutorial action the Department determines to be warranted.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 28), 2008

Mrs. BOXER (for herself, Mr. WHITEHOUSE, Mr. LAUTENBERG, Ms. KLOBUCHAR, and Mr. SANDERS) submitted the following resolution; which was referred to the Committee on Environment and Public Works

RESOLUTION

Expressing the sense of the Senate that the Senate has lost confidence in the Administrator of the Environmental Protection Agency, Stephen L. Johnson, that the Administrator should resign his position immediately, and that the Department of Justice should open an investigation into the veracity of his congressional testimony regarding the California waiver decision and pursue any prosecutorial action the Department determines to be warranted.

Whereas, for most of its nearly 4-decade history, people of the United States could look to the Environmental Pro-

tection Agency for independent leadership, grounded in science and the rule of law, with a sole mission to protect our health and our environment;

Whereas, since Stephen L. Johnson was sworn in as Administrator, the Environmental Protection Agency has failed to carry out its mission, and has issued decision after decision that fails to adequately protect public health and the environment;

Whereas, on the issue of pollution from ozone, the Environmental Protection Agency under Administrator Johnson rejected the recommendations of agency scientists, public health officials, and the agency's own scientific advisory committees, and instead established an ozone standard that fails to protect the public, especially children and the elderly, from the harmful effects of ozone pollution, such as lung disease and asthma;

Whereas, on the issue of pollution from soot, known as "particulate matter", Administrator Johnson bowed to pressure from industry and failed to strengthen an outdated standard limiting the annual average levels of soot pollution, despite calls from the agency's own scientific advisory committees and health and medical experts to strengthen that standard to protect public health;

Whereas, on the issue of pollution from lead, Administrator Johnson failed to heed the Environmental Protection Agency's own scientists and proposed a standard that would leave children in harm's way;

Whereas, on the issue of the Toxic Release Inventory, the Agency's decision to weaken the community right-to-know rules for toxic chemicals used and released in communities across the country will quadruple the quantity of

toxic pollutants that companies can release before the companies are required to provide to the public detailed information about the releases;

Whereas the Environmental Protection Agency went forward with those changes to the Toxic Release Inventory despite objections from 23 State agencies and attorneys general, and despite concerns raised by the Agency's own science advisory board;

Whereas, on the issue of the toxin perchlorate, the Environmental Protection Agency promulgated a rule revoking the requirement for testing of tap water for perchlorate, a contaminant that has been found in the drinking water of millions of people in 35 States, and which interferes with the thyroid and is especially risky to pregnant women and newborns, and as a result, people in the United States will lack up-to-date information on whether their tap water is contaminated with that toxin;

Whereas, on the issue of vehicle tailpipe emissions, Administrator Johnson denied a waiver that would have allowed California and up to 18 other States to enact strict restrictions on global warming pollution from automobiles, despite the reportedly unanimous recommendations of his professional staff in favor of granting the waiver at least in part, and finding that denying it would very likely be successfully challenged in court;

Whereas, on the issue of global warming pollution, in defiance of the Supreme Court's decision in *Massachusetts v. E.P.A.* (549 U.S. 497), Administrator Johnson has failed to take action after the Court's ruling that the Environmental Protection Agency has the authority, under the Clean Air Act (42 U.S.C. 7401 et seq.), to regulate greenhouse gas emissions that pollute our air, instead

bowing to pressures from the Bush White House to punt the issue to the next administration;

Whereas, under Administrator Johnson, the Environmental Protection Agency has offered legal arguments for its insufficient standards that have provoked ridicule by the courts, which, for example, have accused the agency of employing the “logic of the Queen of Hearts” and living in “a Humpty-Dumpty” world in attempting to evade the intent of Congress and the clear meaning of the Clean Air Act (42 U.S.C. 7401 et seq.);

Whereas, Administrator Johnson has allowed the Environmental Protection Agency’s scientific advisory panels to be infiltrated by the very industries they are meant to regulate and control, while at the same time removing from those panels without justification qualified scientists who opposed industry positions;

Whereas a report issued on April 23, 2008, by the Union of Concerned Scientists, entitled “Interference at the EPA”, uncovered widespread political influence in the Environmental Protection Agency decisions, noting, for example, that 60 percent of the Environmental Protection Agency career scientists surveyed had personally experienced at least 1 incident of political interference during the past 5 years;

Whereas the Environmental Protection Agency under Administrator Johnson has altered administrative procedures of the agency to allow the White House Office of Management and Budget and Pentagon secret influence over agency decisionmaking, such as through the Integrated Risk Information System process, an action which the Government Accountability Office has found to be “in-

consistent with the principle of sound science that relies on, among other things, transparency”;

Whereas Administrator Johnson’s response to widespread criticism that his agency is in crisis, and that he allows White House political operatives and polluting industries to dictate his decisions rather than the law and science, has been to label those who have raised those concerns, many of whom are dedicated career employees of his agency, as “yammering critics”;

Whereas, in defiance of his charge under the Constitution of the United States, Administrator Johnson has personally and repeatedly refused to cooperate with Congress in its efforts to conduct regular oversight of the Executive branch, refusing to produce documents as part of legitimate oversight investigations, refusing to appear before committees of Congress, and, when he has appeared, refusing to answer questions in a forthright manner;

Whereas there is strong evidence to believe that Administrator Johnson, at a minimum, provided misleading and intentionally incomplete statements to congressional committees regarding the California waiver issue and, at worst, has given false testimony before those committees;

Whereas, for example, Administrator Johnson on numerous occasions testified before the Committee on Environment and Public Works of the Senate that he based his denial of the California waiver request on California’s failure to meet the “compelling and extraordinary” circumstances criterion under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)), and that he reached this decision independently;

Whereas, testimony by a former senior Environmental Protection Agency official, Jason Burnett, reveals that in fact Administrator Johnson had determined that California met the requirements for a waiver under that Act and had communicated his plan to partially grant the waiver to the Administration in a meeting at the White House, only to reverse course and deny the waiver after White House officials “clearly articulated” President Bush’s “policy preference” for a single regulatory system, even though the Clean Air Act clearly contemplates a dual system in cases in which the statutory criteria for the waiver are met;

Whereas Mr. Burnett’s testimony was that Administrator Johnson was prepared to grant the California waiver until it was “clearly articulated” to him that the President preferred a different approach;

Whereas Administrator Johnson’s sworn testimony before the Committee on Environment and Public Works of the Senate appears to have been designed to mislead Congress and the people of the United States regarding the extent to which the White House intervened in the decision to deny the California waiver, despite the conclusion of career staff at the Environmental Protection Agency, and evidently of the Administrator himself, that the statutory criteria for granting the waiver under the Clean Air Act had been met; and

Whereas the Environmental Protection Agency is an agency in crisis and is in need of leadership dedicated to tackling the enormous public health and environmental issues faced by our country and our planet, in an independent manner that comports with science and the law and is immune from political interference: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) the Senate has lost confidence in the Ad-
3 ministrator of the Environmental Protection Agency,
4 Stephen L. Johnson;

5 (2) Administrator Johnson should resign his
6 position immediately; and

7 (3) the Department of Justice should open an
8 investigation into the veracity of his congressional
9 testimony regarding the California waiver decision
10 and to pursue any prosecutorial action the Depart-
11 ment determines to be warranted.

○